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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.V., a Person Coming Under
the Juvenile Court Law.

B291391; B292684

(Los Angeles County
Super. Ct. No. DK18809)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Daniel Zeke Zeidler, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for
Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

In this consolidated appeal, M.V. (Mother) challenges two orders, one denying Mother's change of circumstance petition seeking custody of her infant daughter C.V., and a later order terminating Mother's parental rights over C.V. We consider, as to the former order, whether the juvenile court abused its discretion in concluding Mother had not made a prima facie showing of changed circumstances. As to the latter order, we consider whether the juvenile court erred in declining to find applicable the parent-child relationship exception to statutory provisions governing the termination of parental rights.

I. BACKGROUND

A. *C.V. Is Removed from Mother's Custody*

In July 2016, C.V.'s maternal aunt called the Los Angeles County Department of Children and Family Services (the Department) and reported Mother was a "drug addict" who uses methamphetamine. Several months earlier, Mother agreed to put C.V. in the aunt's and maternal grandmother's temporary care in order to get clean from methamphetamine, which Mother was using as a means of coping with the stress of being evicted from her home. However, once C.V. was out of her care, Mother became depressed and her use of methamphetamine increased. The aunt called the Department because Mother had removed C.V. from her and the grandmother's care.

During the Department's investigation, Mother admitted she began using methamphetamine at age 13 (she was then 20) and had used the drug five days before removing C.V. from her maternal aunt's care. The Department obtained a removal order detaining C.V. from Mother and filed a dependency petition alleging, among other things, that Mother's history of substance

abuse and then-current abuse of methamphetamine placed C.V. at risk of serious physical harm.

At the detention hearing, over objections by counsel for the Department and C.V., the juvenile court released C.V. back into Mother's custody. The court, however, conditioned the release on Mother's agreement to reside with the maternal grandmother; to submit to weekly and on-demand drug testing; to "test clean"; and to participate in various Department-approved services, including an inpatient substance abuse program

B. C.V. Is Removed from Mother's Custody a Second Time

A month after the detention hearing, the Department filed a first amended petition adding allegations that C.V.'s father had a history of illicit drug use and was a current user of methamphetamine. Both parents subsequently pled no contest to the amended petition.

On the same day that it filed its amended petition, the Department filed a supplemental petition asking the court to change its prior placement order and detain C.V. from Mother. In support of the supplemental petition, the Department reported Mother had not enrolled in an inpatient substance abuse treatment program as ordered by the court. The Department remarked that this failure by Mother was "concerning due to the highly addicting nature of methamphetamine and the high potential for relapse without adequate education and support." The court granted the supplemental petition and ordered the Department to provide reunification services to Mother and visitation between Mother and C.V.

Following removal of C.V. from Mother's care, Mother's compliance with the juvenile court's orders improved. Shortly before she gave birth to C.V.'s younger sister in March 2017, Mother completed a six-month residential substance abuse program for parenting and pregnant women, which included individual counseling. Mother's therapist reported Mother had become "more responsible and mature throughout her treatment." As for C.V., the Department advised the juvenile court that she was doing well with her foster parents.

In advance of the one-year review hearing, the Department prepared a status report for the juvenile court. The report stated Mother was focused on reuniting with C.V., had fully complied with her court-ordered case plan, and was making progress toward her treatment goals. Although the Department expressed concern about Mother's ability to deal with both of her young daughters at the same time, it recommended C.V. be reunited with Mother because it did not then have safety concerns.

At the one-year review hearing, the juvenile court found that Mother had made "substantial" progress toward alleviating or mitigating the causes that had prompted dependency jurisdiction over C.V. The court did not terminate dependency jurisdiction, but it did issue an order removing C.V. from foster care and placing her again in Mother's custody. The court's order, however, was conditioned on Mother's continued compliance with her case plan.

In late 2017, the Department reported Mother was "having difficulty . . . adjusting to having both her children in her care" and had been forced to stop her therapy services because she started a new job. The report observed "Mother has no structure" and appeared "annoyed and frustrated."

C. C.V. Is Removed from Mother's Custody a Third Time

Three months after C.V. had been returned to Mother's care, the transitional housing program where Mother and her two daughters were living discharged Mother from the program because drug paraphernalia (a methamphetamine pipe) had been found in her room. Mother denied the pipe was hers, denied using drugs, and submitted to a drug test. It was positive for methamphetamine.

Despite the positive test result, Mother denied any drug relapse and expressed little interest in returning to an inpatient substance abuse program. Separately, the Department discovered Mother was not following through with her children's medical care—both daughters were past due for physical examinations and immunization vaccines.

In response to these developments, the Department filed a subsequent petition alleging new facts and circumstances warranting dependency jurisdiction, namely, Mother's positive methamphetamine test while C.V. was in her care. Mother denied the petition's allegations. The court ordered C.V. detained, and she and her infant sister were placed with the foster parents who had previously cared for C.V.

By the time of the adjudication hearing on the subsequent petition, Mother had come around to admitting she had relapsed and used methamphetamine, a relapse she attributed to the pressure of "work, services, and caring for the girls." Mother had also enrolled in a six-month inpatient substance abuse program.

The Department recommended the juvenile court again order family reunification services for Mother notwithstanding her "chronic substance abuse issues" and her "failure to consistently participate in individual counseling." The court

disagreed, sustaining the petition and declining to order family reunification services for Mother. Instead, the court ordered the Department to pursue a permanent adoptive placement for C.V. and scheduled a Welfare and Institutions Code section 366.26 selection and implementation hearing.¹

D. The Combined Hearing to Consider Mother's Request for a Change in the Court's Prior Order and Permanency Planning for C.V.

In advance of the section 366.26 hearing, the Department reported C.V. was likely to be adopted by her foster parents. The foster father, who held a graduate degree in Computer Engineering, had a “stable job in his profession” and was “able to work from home,” while the foster mother had an undergraduate degree in Biblical Studies and worked as a homemaker. The prospective adoptive parents had served as C.V.’s foster parents for approximately a year, and they had also previously adopted another child. Because the Department believed adoption was in C.V.’s best interest, it recommended the juvenile court terminate Mother’s parental rights.

Before the scheduled section 366.26 hearing, Mother filed a section 388 petition asking the juvenile court to return C.V. to her care or, failing that, to order further reunification services and unmonitored visitation for Mother. Mother argued such relief was warranted because she had “progressed in her substance abuse program” and had not had any “missed or dirty” drug tests.

¹ Undesignated statutory references that follow are to the Welfare and Institutions Code.

The juvenile court summarily denied Mother's requests for custody and reinstituted reunification services. The court found Mother had shown only "changing not changed circumstances" and, as a result, there was "no legal basis to reinstate family reunification services beyond what had been the . . . 18-month date with a [section 366.26 hearing] pending." Although the court denied the bulk of Mother's petition summarily, the court set a hearing to consider Mother's request for unmonitored visitation (to occur on the same day as the section 366.26 hearing).

Three days before the combined hearing, the Department advised the juvenile court that Mother had once more tested positive for methamphetamine. The Department further reported that, as a result of her positive drug test, Mother had been discharged from her inpatient substance abuse program.

At the combined hearing on Mother's request for unmonitored visitation and the question of whether Mother's parental rights would be terminated to facilitate adoption, the juvenile court made findings adverse to Mother on both issues. As to the former issue, the court found insufficient evidence of changed circumstances and ruled unmonitored visitation would not be in C.V.'s best interest due to Mother's unresolved substance abuse. With regard to C.V.'s permanent placement, the court acknowledged Mother had consistently visited C.V. and identified the parent-child relationship as one possible statutory exception to C.V.'s adoption.

The court heard testimony from Mother, who described her "good bond" with C.V., as exemplified by how she helped C.V. eat and how she soothed C.V. when she got fussy. Once Mother's testimony was complete, C.V.'s attorney joined with the

Department in urging termination of Mother's parental rights due to her "roller coaster" struggles with substance abuse. The juvenile court agreed and terminated Mother's parental rights.

The court found Mother had a parental role and relationship with C.V., but "the instability of Mother's ongoing relapse behavior . . . clearly shows that [her] parental role and relationship d[id] not outweigh the benefit of permanence and adoption for this child." Elaborating, the court explained Mother had "repeatedly relapsed[,] both when the child was in her care and when [she] was in the middle of asking for unmonitored visits." The court observed that "out of almost three years of her life, [C.V. had] only been in Mother's care [for a] total [of] less than a year."

II. DISCUSSION

Mother challenges the juvenile court's summary denial of her petition that again sought custody of C.V. or restored reunification services.² We hold the juvenile court was entitled to

² The Department argues we lack jurisdiction to review the order summarily denying portions of Mother's section 388 petition because Mother did not file a timely notice of appeal with regard to that particular order. Although Mother's initial notice of appeal did not expressly reference the denial of her section 388 petition, we liberally construe it as having done so. (*In re Madison W.* (2006) 141 Cal.App.4th 1447, 1451.) Mother brought the denial of her section 388 petition to the attention of this court and the Department in a timely manner. The Department addressed the section 388 issue in its respondent's brief, and the Department has not argued or otherwise shown that it was prejudiced by Mother's belated identification of the section 388 ruling.

deny Mother's requests without a hearing because her petition and the facts then before the juvenile court did not make an adequate initial showing of changed circumstances.

As for the order terminating Mother's parental rights, the juvenile court did not err in finding Mother failed to establish all the prerequisites for the parent-child relationship exception to apply. Mother's struggle with methamphetamine abuse—which continued right up until the parental rights termination hearing—established there was no compelling reason to believe C.V. would benefit from continuing the parent-child relationship, especially in the light of the stable, drug-free, and thriving relationship C.V. had with her prospective adoptive caregivers.

A. The Section 388 Petition

Section 388 allows a parent to petition the juvenile court to change or modify a previous order based on a “change of circumstance or new evidence.” (§ 388, subd. (a).) “If it appears that the best interests of the child . . . may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . .” (§ 388, subd. (d).) The parent seeking modification must “make a prima facie showing to trigger the right to proceed by way of a full hearing. [Citation.]” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

There are two components to the prima facie showing: “The parent must demonstrate (1) a genuine change of circumstances . . . , and that (2) revoking the previous order would be in the best interests of the [child]. [Citation.]” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) Promotion of the child's best interests “is determined by the seriousness of the problem leading to the dependency and the reason for its

continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.)

A petition under section 388 must be liberally construed in favor of its sufficiency. (Cal. Rules of Court, rule 5.570(a).) ““Thus, if the petition presents any evidence that a hearing would promote the best interests of the child, the court will order the hearing.” [Citations.]” (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 431-432.) However, “[i]f the liberally construed allegations of the petition do not show changed circumstances such that the child’s best interests will be promoted by the proposed change of order, the dependency court need not order a hearing.” (*In re Anthony W.*, *supra*, 87 Cal.App.4th at p. 250; see also *In re Josiah S.* (2002) 102 Cal.App.4th 403, 419 [a hearing on a section 388 petition “is only to be held if it appears that the best interests of the child may be promoted by the proposed change of order, which necessarily contemplates that a court need not order a hearing if this element is absent from the showing made by the petition.”].) A section 388 petition that “alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

In her petition, Mother alleged she had enrolled in a substance abuse program. However, Mother did not allege she had completed the program or identify when she would complete

it. The program was a six-month to one-year program and, at the time of her petition, Mother had been in the program for only four months.³ In light of Mother’s history of abusing methamphetamine, getting clean through participation in similar programs, and then relapsing, the juvenile court was within its discretion to determine mere enrollment in a substance abuse program did not constitute a prima facie showing that Mother’s circumstances had genuinely changed. (See, e.g., *In re J.C.* (2014) 233 Cal.App.4th 1, 7 [seven months of sobriety insufficient to show parent was not at risk of relapse]; *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 686 [mother’s 372 days of sobriety insufficient to show changed circumstances in light of her many years of substance abuse and previous relapses]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [father’s 200 days of sobriety was insufficient to demonstrate that parent would suffer no further relapses].) Without a prima facie showing of changed rather than changing circumstances, the juvenile court was not obligated to hold a hearing.

B. Termination of Parental Rights and the Parent-Child Relationship Exception

1. Section 366.26 and the exception

“Section 366.26 establishes a detailed procedure for terminating parental rights. Subdivision (c)(1) states that a prior

³ In fact, Mother never completed the program—she was discharged from the program less than a month after filing her petition and just a few days before the combined hearing giving rise to this appeal.

order under section 361.5 terminating reunification services ‘shall constitute a sufficient basis for termination of parental rights.’ If the court determines under a ‘clear and convincing standard’ that it is ‘likely the child will be adopted,’ the court ‘shall terminate parental rights and order the child placed for adoption.’ (§ 366.26, subd. (c)(1).) The goal is to provide ‘stable, permanent homes’ for children who are dependents of the juvenile court, and the first choice to achieve that goal is adoption. (§ 366.26, subd. (b); *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348[] (*Jasmine D.*).)

“This procedure recognizes that ‘[b]y the time of a section 366.26 hearing, the parent’s interest in reunification is no longer an issue and the child’s interest in a stable and permanent placement is paramount.’ (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) Thus, to terminate parental rights under section 366.26, the [juvenile] court ‘need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be terminated.’ (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250[].) Under these circumstances, ‘the court shall terminate parental rights’ unless certain exceptions apply. (§ 366.26, subd. (c)(1).)” (*In re Logan B.* (2016) 3 Cal.App.5th 1000, 1009-1010.)

The parent-child relationship exception Mother invokes is found at section 366.26, subdivision (c)(1)(B)(i). In relevant part, the statute provides: “[T]he court shall terminate parental rights unless . . . [¶] . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the

child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c).) Mother bears the burden of proving the exception applies. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re K.P.* (2012) 203 Cal.App.4th 614, 621 (*K.P.*); see also *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [“To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed”] (*Angel B.*).)

When deciding whether Mother has carried that burden, we take into account the age of the child, the portion of the child’s life spent in the parent’s custody, the positive or negative effect of interaction between the parent and child, and the child’s particular needs. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 937-938; *Angel B.*, *supra*, 97 Cal.App.4th at p. 467.) Mother must do more than show her children would receive some benefit from continuing a relationship maintained during periods of visitation. (*Angel B.*, *supra*, at p. 466.) Even if the parent-child contact has been loving and frequent, and notwithstanding the existence of an “emotional bond” with the child, Mother must show she occupies “a parental role in the children’s lives.” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300; accord, *K.P.*, *supra*, 203 Cal.App.4th at p. 621.) For this reason, a parent-child relationship that satisfies the section 366.26, subdivision (c)(1)(B)(i) exception characteristically (though not necessarily) arises from day-to-day contact between the parent and child; it will be difficult for a parent who has not progressed beyond monitored visitation to show the exception is applicable. (*K.P.*,

supra, at pp. 621-622; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.)

2. *The juvenile court did not abuse its discretion in finding the parent-child exception inapplicable*

Mother's ability to care for C.V. had been compromised almost from the time of her birth by Mother's inability to deal with stress without resorting to methamphetamine. Mother was compelled to leave C.V. in the care of relatives for months in order to cope with her abuse of methamphetamine that had arisen due to the stress of being homeless. While C.V. was in the maternal aunt's care, Mother's methamphetamine abuse worsened. Then, after C.V. was returned to Mother's care, she relapsed after only three months despite having recently completed a six-month inpatient substance abuse program and a six-month outpatient program—and notably, she stated the relapse was at least partly due to the stress of again being responsible for caring for C.V. and her sister. Although Mother enrolled in another treatment program during the dependency proceedings, she relapsed yet again just days before the highly consequential section 366.26 hearing, which demonstrated her inability to remain sober even under the watchful eyes of the court and the Department.

With C.V. having been in and out of Mother's care due to her recurring drug abuse, and as contrasted with C.V.'s placement with a stable, loving foster family who had cared for her during the majority of the two-year dependency proceeding and who wanted to adopt her, the juvenile court reasonably concluded that this was not the extraordinary case where the

parent-child relationship exception should apply to prevent termination of parental rights and the adoption intended to follow. The juvenile court's "foremost concern" was C.V.'s interest in stability, not any interest Mother might have in reunification (*In re Anthony W.*, *supra*, 87 Cal.App.4th at pp. 251-252), and we hold the court's parental rights termination order was correct under the circumstances.

DISPOSITION

The juvenile court's orders denying Mother's section 388 petition and terminating her parental rights over C.V. are affirmed.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.